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PUBLIC HEALTH REGULATIONS  
DEPARTMENT OF HEALTH, STATE OF HAWAII  
FIRST AMENDMENT TO CHAPTER 37  
WATER POLLUTION CONTROL

Under and by virtue of the provisions of Chapter 342, Hawaii Revised Statutes, and the Federal Water Pollution Control Act Amendments of 1972, PL 92-500, and all other applicable laws, the following provisions of Chapter 37 of the Public Health Regulations, Department of Health, State of Hawaii, relating to Water Pollution Control are hereby amended:

1. The following provisions of section 1 "Definitions" shall be amended to read as follows:

"(b) "Wastes" means waste materials of any kind, whether treated or not, and whether animal, mineral, or vegetable, and whether liquid, gaseous, radioactive, or solid, including sewage and agricultural and industrial and thermal wastes, which may pollute or tend to pollute the waters of this state.) *came any state waters to be reduced in quality below the standards applicable to the area as set out in Chapter 37-A of the Public Health Regulations...*

"(x) "Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Director determines to be achievable through application of the best demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants [provided that such standard shall not be less stringent than required under section 306 of the Act.] *added*

"(y) "New source" means any source the construction of which is commenced:

- (1) After the adoption by the Director of regulations prescribing a standard of performance which will be applicable to such source, *or*
- (2) After the publication by the Administrator of proposed regulations prescribing a standard of performance which will be applicable to such source, if such standard is thereafter promulgated by the Administrator, whichever occurs first."

2. Section 3 "General Prohibition" shall be amended to read as follows:

"No person, including any public body, shall use any state waters for the disposal of waste or the discharge of a pollutant, engage in activity which causes state waters to become polluted, except as in compliance with a permit, or zone of mixing issued by the Director.

*or violate any NPDES permit or term or condition thereof without first securing approval in writing from the Director.*  
"No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the Director."

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3. Subsection (c)(7) of section 9 "Public Notice" shall be amended to read as follows:

"(7) Address and phone number of State or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to section 8(b), request a copy of the fact sheet described in section 10, (if prepared) and inspect and copy NPDES forms and related documents."

4. Section 15 "Issuance of NPDES Permits" shall be amended to read as follows:

"The Director may issue an NPDES permit for any period not exceeding five years, and may renew a permit for any additional periods not exceeding five years. Upon expiration of the date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

- (a) The Director shall issue an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with, when and as applicable, (i) the best practicable control technology or best available technology economically achievable, for point sources other than publicly owned treatment works, and (ii) for publicly owned treatment works, secondary treatment or the best practicable waste treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum. New treatment works or waste outlets are designed in compliance with the applicable standards of performance.
- (2) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules and regulations of the Department of Health.
- (3) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards.
- (4) A schedule of implementing actions will be followed in order to comply with applicable water quality standards and established effluent limitations.

- (b) NPDES permits may include conditions such as:

- (1) Requirement that the applicant provide such facilities as are necessary for monitoring of the authorized waste discharge into state waters and the effects of such wastes on the receiving waters. The program for water and effluent quality monitoring shall be in accordance with section 26 through 31.
- (2) Requirements which will bring the operation of any existing wastes sources described in the application within the conditions of paragraph "a" of this section.
- (3) Compliance with any application of effluent standards and limitations, water quality standards and other requirements by the Director pursuant to sections 19, 20, and 22.



- (c) (1) In acting upon an NPDES application for an NPDES permit the Director may deny an NPDES application if the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES application cannot conditionally, or otherwise, meet the conditions of paragraph "a" of this section.
- (2) The Director shall not issue a permit or grant a modification or variance for any of the following:
- (a) Discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste into navigable waters;
  - (b) Discharge which the Secretary of the Army acting through the chief of engineers finds would substantially impair anchorage and navigation;
  - (c) Discharge to which the Regional Administrator has objected in writing pursuant to any right to object provided the Administrator in section 402(d) of the Act; and
  - (d) Discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act."

5. Section 16 "Revocation, Suspension, Modification, or Revision of NPDES Permit" shall be amended to read as follows:

- "(a) Each NPDES permit shall be subject to revocation, to suspension, to modification, or revision by the Director if, after notice and opportunity for a public hearing, he shall determine that:
- (1) There is a violation of any condition of the NPDES permit, or
  - (2) The NPDES permit was obtained by misrepresentation, or failure to disclose fully all relevant facts, or
  - (3) The NPDES permit was willfully defaced, altered, forged, counterfeited, or falsified, or
  - (4) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, or
  - (5) There is a violation of a rule or regulation of the Department of Health, or
  - (6) Such is in the public interest.
- (b) In taking such action the Director may consider operation records, investigation, or other information regarding the treatment works, outlets, or quality of effluent and/or receiving waters. Such action shall be effected by giving written notice to the permittee, which notice shall contain the reasons for the action.
- (c) No NPDES permit shall be revoked, suspended, modified, or revised unless the permittee has had an opportunity for a hearing by the Director.

- (d) Suspension, revocation, modification, or revision of an NPDES permit shall become final 10 days after service of notice on the holder of the NPDES permit or as otherwise specified by the Director. An NPDES permit which has been revoked shall be surrendered forthwith to the Director and all fees shall be forfeited.
  - (e) All applications made pursuant to Chapter 342-7, Hawaii Revised Statutes, for a variance from the terms and conditions of an NPDES permit shall also be deemed applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five (5) years."
6. Subsection (a) of section 19 "Application of Effluent Standards and Limitations, Water Quality Standards, and Other Requirements" shall be amended to read as follows:
- "(a) NPDES permits shall apply and insure compliance with the following whenever applicable:
- (1) Effluent limitations under sections 301 and 302 of the Act;
  - (2) Standards of performance for new sources;
  - (3) Effluent standards, effluent prohibitions, and pre-treatment standards under section 307 of the Act;
  - (4) Any more stringent limitation, including those (i) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any state law or regulations (under authority preserved by section 510), or (ii) necessary to meet any other federal law or regulation, or (iii) required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Act and any regulations and guidelines issued pursuant thereto;
  - (5) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the Act;
  - (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306, and 307, such conditions as the Director determines are necessary to carry out the provisions of the Act; and
  - (7) If the NPDES permit is for the discharge of pollutants into the navigable waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants."

7. Subsection (a) of section 30 "Sampling and Testing Methods" shall be amended to read as follows:

"(a) All sampling and testing shall be done in accordance with test procedures approved by the Director, and, when applicable with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with section 304(g) of the Act. All tests shall be made under the direction of persons knowledgeable in the field of water pollution control."

8. Subsection (a) of Section 31 "Malfunction of Equipment Reporting" shall be amended to read as follows:

"(a) There shall be no shutdown of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for such maintenance has been submitted to and approved by the Director prior to such shutdown. In the case of shutdown of water pollution control equipment for necessary maintenance for which a schedule has been approved by the Director, the intent to shutdown such equipment shall be reported to the Director at least twenty-four (24) hours prior to the planned shutdown.

Such prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service as well as its location and NPDES permit number.
- (2) The expected length of time that the water pollution control equipment will be out of service.
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shutdown period.
- (4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period and the pollutional effects of the wastes to be by-passed.
- (5) The reasons that it would be impossible or impractical to shutdown the source operation during the maintenance period."

9. Section 33 "Penalties" shall be amended to read as follows:

"Any person who violates the provisions of this Chapter or the terms and conditions of any permit issued pursuant to this Chapter shall be liable for a penalty as provided in Chapter 342, Hawaii Revised Statutes."

I, Walter B. Quisenberry, M.D., Director of Health, State of Hawaii, hereby certify that the foregoing regulations were adopted by the Department of Health on the 15th day of October, 1974.

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WALTER B. QUISENBERRY, M.D.  
Director of Health

The foregoing regulations are hereby approved as to form this  
\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
ROBERT R. TAYLOR  
Deputy Attorney General

The foregoing regulations are hereby approved this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
GEORGE R. ARIYOSHI  
Acting Governor of Hawaii

I hereby certify that this is a true and correct copy of the original which is on file and on record in the Office of the Director, Department of Health, State of Hawaii.

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WALTER B. QUISENBERRY, M.D.  
Director of Health

Chapter 37, Water Pollution Control, of the State Public Health Regulations was adopted on October 15, 1974, following a public hearing held on October 8, 1974 after public notice was published in the Honolulu Star Bulletin on September 6, 1974; Hawaii Tribune-Herald on September 6, 1974; The Maui News on September 7, 1974; The Garden Island on September 4, 1974.

Filed in Lt. Governor's Office:  
Effective date: